UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 34 | Number 2 Article 8

2-1-1956

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Jerry A. Campbell

contract had been formed in order to gain an advantage for himself.

In summary, it would appear that although there can be no certain test for determining how a court will construe the language of the offeree which might seem to add contingencies to the original offer, an analysis of these cases seems to indicate that in determining whether a contract has been formed, the courts look beyond the language of the parties to the nature of the actions of the parties. If it appears that one of the parties knowingly allowed the other to rely on him as an expected source of gain, and subsequently, either arbitrarily, or because he has found a better bargain, cuts the other party off from the source of gain, it is probable that the court will construe the language in favor of the expectant party.

HARRIET D. HOLT.

Criminal Law—Search of Private Dwelling—Incident to Arrest

In *Clifton v. United States*,[1] federal revenue agents went to the defendant's home with an informant who told the person answering his knock that he wished to buy whiskey. He was told to see Earl Padgett, who lived down the road. The investigators and the informant returned to the defendant's backyard with Padgett who entered the back door and came out with a half-gallon of non tax-paid whiskey. The investigators paid Padgett for the whiskey, identified themselves and arrested him. Then one of the investigators searched the defendant's home and found illicit whiskey. The investigators had neither a warrant for the arrest of Padgett nor a search warrant for the defendant's house. The defendant's motion to suppress the evidence obtained by this search was denied by the trial court, and he was convicted. The Court of Appeals for the Fourth Circuit affirmed, saying: "The search in this case was reasonable, being incident to the arrest of Padgett. It is not necessary that the owner be the party arrested in such a case."[2]

This decision has extended the law of search incident to arrest far beyond bounds heretofore established. The court not only sanctioned the search of a private dwelling when the arrest took place outside the dwelling, but also held such a search to be reasonably incident to a lawful arrest where the party arrested was not the owner of the dwelling.

The Fourth Amendment to the United States Constitution guarantees to the people the right "to be secure in their persons, houses, papers

[1] *224* F. 2d *329* (4th Cir. 1955).

[2] *Id.* at 331. This case is of great importance to North Carolina because this state adopted the federal rule that evidence obtained by unlawful search and seizure is, on proper objection, inadmissible in criminal proceedings. N. C. GEN. STAT. § 15-27 (1951).

and effects, against unreasonable searches and seizures."[3] This constitutional guaranty does not prohibit all searches and seizures without a warrant, but only unreasonable ones.[4] The legal maxim, "every man's house is his castle," applies with all its vigor to the right of search of private dwellings,[5] and generally, under the federal and state constitutions and statutes, search of a private residence, without invitation or consent,[6] may not be made without a search warrant,[7] except when such a search is incident to a lawful arrest,[8] such search being considered constitutionally reasonable.

It was decided at an early date that a search without a warrant of the arrested person in order to protect the arresting officer, to deprive the prisoner of potential means of escape or to avoid destruction of evidence by the arrested person was reasonable.[9] Later this right to search without a warrant was extended beyond the actual person of the one arrested to include "the place of arrest," *i.e.*, "the area immediately surrounding the accused" and "the premises under his immediate control." This, apparently, was to provide for the situation where the accused hurriedly disposes of the evidence by throwing it on the ground, tossing it in a bush, or slipping it in an article of clothing hanging nearby.[10] Thus, it has been held that where the person is arrested on his own property the right of search extends a reasonable distance from the place of arrest to include the land,[11] garages,[12] sheds[13] and other buildings not used as a dwelling. Twenty-five feet has been held a reasonable distance because not beyond the extent of the offender's activities;[14] a similar result has been reached in the case of a barn one hundred feet away, since it "was in the immediate vicinity of the place where the arrest was made."[15] But, under these circumstances the private dwelling could not be searched.[16] Courts have held that the

[3] Similar or identical provisions are contained in constitutions of each of the forty-eight states. They are collected in CORNELIUS, SEARCH AND SEIZURE, § 7, pp. 46-7 (1926).

[4] Cannon v. United States, 158 F. 2d 952 (5th Cir. 1946); Joyner v. State, 157 Fla. 874, 27 So. 2d 349 (1946).

[5] Gorman v. State, 161 Md. 700, 158 Atl. 903 (1932); Coburn v. State, 59 Okla. Crim. 333, 60 P. 2d 399 (1936).

[6] Williams v. United States, 295 Fed. 219 (D. Mont. 1924); People v. Broas, 240 Mich. 495, 215 N. W. 420 (1927).

[7] Baxter v. United States, 188 F. 2d 119 (6th Cir. 1951); Brown v. United States, 83 F. 2d 383 (3rd Cir. 1936).

[8] Roberson v. United States, 165 F. 2d 752 (6th Cir. 1948); Papani v. United States, 84 F. 2d 160 (9th Cir. 1936).

[9] See MECHAN, SEARCH AND SEIZURE, § 13, pp. 62-4 (1950).

[10] *Ibid.*

[11] Koth v. United States, 16 F. 2d 59 (9th Cir. 1927).

[12] State v. Estes, 151 Wash. 51, 274 Pac. 1053 (1929).

[13] State v. Rotolo, 39 Wyo. 181, 270 Pac. 665 (1928).

[14] Shew v. United States, 155 F. 2d 628 (4th Cir. 1946).

[15] Kelly v. United States, 61 F. 2d 843, 847 (8th Cir. 1932).

[16] Weeks v. United States, 232 U. S. 383 (1914).

dwelling cannot be searched when the arrest takes place in front of the dwelling house,[17] when the arrest takes place in the yard to the house,[18] or when the arrest takes place in an automobile driving away from the house.[19] It was only when the arrest took place within the home that a search of it could be made without a warrant. In *Agnello v. United States*[20] the court disapproved a search of the defendant's home without a warrant where the arrest of defendant took place in a neighbor's home some distance away. "One's house cannot lawfully be searched without a search warrant," said the court, "except as an incident to a lawful arrest *therein.*" (Emphasis added.)[21]

Thus, the principal case stands alone in approving the search of the home as incident to an arrest made outside the home.[22] The court disregarded the criterion of reason generally applied by the courts limiting the search to the necessities of the situation, *i.e.,* the search of the person and those immediate physical surroundings which may fairly be deemed to be an extension of his person. The court appeared to rely heavily on the "reasonableness under the circumstances" language of *Rabinowitz v. United States*[23] saying: "The Supreme Court indicated that whether a search and seizure without a warrant is reasonable within the meaning of the Fourth Amendment depends upon the facts of each particular case and is not a question easily answered by recourse to mechanical tests."[24]

It is true that Justice Minton in the *Rabinowitz* case said: "The recurring question of the reasonableness of searches must find resolution in the facts and circumstances of each case. What is a reasonable search is not to be determined by any fixed formula."[25] However, a close study of that case reveals that the "fixed formula" to which Justice Minton was referring was the requirement laid down previously in *Trupiano v. United States*[26] which required officers to secure a warrant wherever practical before making a search. Justice Minton went on to say: "The test [of a reasonable search] is not whether it is reasonable to

[17] Poulos v. United States, 8 F. 2d 120 (6th Cir. 1925); Thomas v. State, 27 Okla. Crim. 264, 226 Pac. 600 (1924).
[18] Wallace v. State, 42 Okla. Crim. 143, 275 Pac. 354 (1929); Fowler v. State, 114 Tex. Crim. 69, 22 S. W. 2d 935 (1930).
[19] Papani v. United States, 84 F. 2d 160 (9th Cir. 1936).
[20] 269 U. S. 20 (1925).
[21] *Id.* at 32.
[22] In Patton v. State, 43 Okla. Crim. 436, 279 Pac. 694 (1929) where the defendant, seeing that he was about to be arrested, ran out the back door of his home and was caught only twenty feet away, the court approved the incidental search of part of the house on the ground that the arrest was so closely associated with it that the arrest did virtually take place, or at least began within the house.
[23] 339 U. S. 56 (1950).
[24] 224 F. 2d 329, 330 (4th Cir. 1955).
[25] 339 U. S. 56, 63 (1950).
[26] 334 U. S. 699 (1948).

procure a search warrant, but whether the search was reasonable";[27] and in giving the reasons for holding the search there concerned reasonable, he said: "The place of arrest was a business room to which the public, including officers, was invited, the room was small and *under the immediate and complete control* of the defendant, and the search did not extend beyond the room used for the unlawful purpose." (Emphasis added.)[28] Therefore, even though Justice Minton used the phrase "reasonable under the circumstances," he, nevertheless, applied the same criterion of reason found in previous cases. Thus, it can be seen that the *Rabinowitz* case neither extended the limits of search incident to arrest nor set up a new criterion for determining the reasonableness of such a search.

If homes can be searched and property seized as in the principal case, and such property held and used as evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value and might as well be stricken from the Constitution. To permit a search of the defendant's home when he is arrested outside the home is, in itself, an unreasonable extension of the right to search incident to arrest; but, to permit his home to be searched as incident to the arrest of a third party outside his home is an even greater encroachment upon the Constitutional guaranty; for in such a case the privacy of the owner is involved and not that of the arrestee.

JERRY A. CAMPBELL.

Evidence—Admissibility of Partially Inaudible Recordings

Since the ascertainment of truth is the ultimate aim of our judicial system, and because memory plays an important role in helping to realize that goal, it is not surprising that more and more scientific devices which aid in evaluating the uncertain memories of men have found their way into the courts.[1] The use of sound recordings as a means of proof is an example of how a scientific device can supplement or, in some cases, supplant the testimony of human witnesses in litigation.[2]

The problem of the introduction into evidence of mechanically preserved sound is not new. As far back as 1906, in a suit for damages because of an alleged diminution of property value due to noise, the

[27] Rabinowitz v. United States, 339 U. S. 56, 66 (1950).
[28] *Id.* at 64.

[1] For a discussion of the development of the use of scientific devices in the courtroom, see Baer, *Radar Goes to Court,* 33 N. C. L. REV. 355 (1955).
[2] For a discussion of the problems and advantages involved in the use of magnetic tape recordings as a means of proof and as a means of recording courtroom proceedings, see Conrad, *Magnetic Recordings in the Courts,* 40 VA. L. REV. 23 (1954).